

Inventor: Edward G. Hanell
Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

IV. REMARKS

A. Prior Office Actions Basis

Claims 1-20 are pending in the present Application. Pending Claims 1-12 have been rejected by the Examiner under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 5,960,992 to Bernstein et al. in view of U.S. Patent No. 4,881,662 to Tallman. Claims 13-15 have been rejected by the Examiner under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 5,147,070 to Iwamoto in view of U.S. Patent No. 4,881,662 to Tallman. Finally, Claims 16-20 have been rejected by the Examiner under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 5,366,114 to Bernstein et al. in view of U.S. Patent No. 4,881,662 to Tallman.

B. Amendment Overview

By this Amendment, the Specification has been amended (1) on page 10, line 6 to clarify the language of the original specification that one-hundred twenty degrees is one-hundred twenty mechanical degrees, (2) on page 10, line 19 to correct a typographical error, (3) on page 12, line 2 to clarify that the term "thereon" means - - on the surface of the punch blade 124 - - and (4) on page 15, line 26 and (5) on page 17, line 9 to correct misspelling of words. The amended Specification on pages 10, 12, 15 and 17 are presented in a marked-up version herein in accordance with 37 C.F.R. Sec. 1.121 as revised on July 30, 2003. Independent Claims 1, 13 and 16 have each been amended to overcome rejections based upon 35 U.S.C. Sec. 103(a). Dependent Claim 7 has been amended to overcome rejections based upon 35 U.S.C. Sec. 103(a) and to be consistent with amended independent Claim 1. The claims have been amended in accordance with 37 C.F.R. Sec. 1.121 as revised on July 30, 2003 and the required claim listing is included herewith. Formal drawing Figs. 1-14 on sheets 1-4 are enclosed for entry into the record. Arguments in favor of allowance of Claims 1-20, as amended, are also included. Amendments and additions to the Claims have been drawn from the Specification and Drawings as originally filed. New matter as described in 35 U.S.C. §132 has not been added to the Specification.

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III. IN THE DRAWINGS:

A. Please enter the enclosed formal drawing Figs. 1-14 of record appearing on Sheets 1-4 in the pending patent application having Serial No. 10/619,903.

1. The drawing Figs. 1-14 were filed informally with the pending patent application having Serial No. 10/619,903 on July 15, 2003.
2. Enclosed please find the formal drawing Figs. 1-4 on sheets 1-4.
3. Each of the sheets 1-4 includes an identification label placed on the back side thereof.
4. Please enter the formal drawings of record in this pending patent application.

The proposed changes should not, therefore, be objectionable. Accordingly, entry of these changes is hereby respectfully requested.

C. Amendments to the Specification

Amendments to the Specification as originally filed in marked-up form are included with this Amendment "A".

1. The amendments to the paragraph on page 9, line 15 - page 10, line 7 of the Specification (specifically page 10, line 6) as originally filed clarifies that "one-hundred twenty degrees" is actually - - one-hundred twenty mechanical degrees - -.

2. The amendment to the paragraph on page 10, line 17 to page 11, line 4 of the Specification (specifically page 10, line 19) as originally filed corrects the typographical error of "Fig. 11that" to - - Fig. 11 that - -.

3. The amendment to the paragraph on page 12, lines 1-20 of the Specification (specifically page 12, line 2) as originally filed replaces and clarifies the term "thereon" with the more descriptive phrase - - on the surface of the punch blade 124 - -. This amendment is clearly supported by the illustrations appearing in Figs. 8, 9, 10, 11, and 12. In particular, Fig. 11 clearly shows the projection spur 136 formed on the surface of each punch blade 124. Further, on page 12, lines 7-9 of the specification as originally filed, it is noted that "Thus, each projection spur 136 is a stainless steel fragment extending from the corresponding stainless steel punch blade 124 as is best shown in the cross-sectional views of Figs. 9 and 10." Additionally, the word "with" on page 12, line 19 is replaced with the word - - within - -, an obvious typographical error.

4. The amendment to the paragraph on page 15, line 15 to page 16, line 3 of the Specification (specifically page 15, line 26) as originally filed corrects the misspelled word "rid" to - - ride - -.

5. The amendment to the paragraph on page 16, line 27 to page 17, line 11 of the Specification (specifically page 17, line 9) as originally filed corrects the misspelled word "forcible" to - - forcibly - -.

6. The Examiner is respectfully requested to make these amendments to the Specification of record.

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D. Formal Drawing Figs. Enclosed

Please enter the enclosed formal drawing Figs. 1-14 of record appearing on Sheets 1-4 in the pending patent application having Serial No. 10/619,903.

1. The drawing Figs. 1-14 were filed informally with the pending patent application having Serial No. 10/619,903 on July 15, 2003.
2. Enclosed please find the formal drawing Figs. 1-4 on sheets 1-4.
3. Each of the sheets 1-4 includes an identification label placed on the rear side thereof.
4. Please enter the formal drawings of record in this pending patent application.

E. Invention as Presently Claimed is Patentable

Applicant's invention is directed to a pouring spout 100 for providing a conduit for the discharge of the contents of a closed container 102 containing, for example, fluids or granulated materials 104 and in particular, facilitates the removal of liquid materials typically used in the building and construction industry such as, for example, paint. The pouring spout 100 enables measured volumes of, for example, paint to be removed from the closed container 102 which can be a standard gallon container. Insertion of the inventive pouring spout 100 into a top surface or lid 106 of the closed container 102 enables the measured volume of paint to be dispensed to a second container, such as a roller pan, without the spillage typically associated with removing paint from a gallon container. In a preferred embodiment, the pouring spout 100 can comprise a cylindrical inner housing 110 having an open top end 112 in combination with a pair of opposing stainless steel punch blades 124 for insertion into the top surface or lid 106 of the closed container 102. Each of the punch blades 124 include a projection spur 136 formed thereon to force open that portion of the top lid 106 that has been sliced open by the insertion of the punch blades 124. Each of the punch blades 124 also can include a locking notch 150 for enabling each punch blade 124 to bite into the top lid 106 for providing a more secure grip. Additionally, the present invention is fitted with an outer safety sleeve 114 for covering the pair of opposing punch blades 124 when the pouring spout 100 is not in use. A removable cap 118 tethered to the outer safety sleeve 114 is

provided for closing the open top end 112 to seal the container 102 once the punch blades 124 have been inserted therein.

The cylindrical inner housing 110 also includes an anti-drip collar 116 which serves to prevent drainage or dripping of paint once the pouring operation has ceased. Further, the anti-drip collar 116 also functions to secure the removable cap 118 to the pouring spout 100. A plurality of guide ribs 122 are formed onto the external surface of the cylindrical inner housing 110 which are intended to cooperate with a corresponding plurality of slots 176 formed in a top ring 170 attached to the top of the outer safety sleeve 114. The guide ribs 122 serve to keep the outer safety sleeve 114 aligned with the cylindrical inner housing 110 and to provide an interference fit there between. A raised ring 120 is formed on the bottom of the cylindrical inner housing 110 to serve as a stop when the cylindrical inner housing 110 reaches the top surface or lid 106 of the closed container 102 during insertion of the punch blades 124. A seal washer 146 is positioned between the raised ring 120 and the top surface or lid 106 of the closed container 102 to prevent leakage of paint at that interface.

The plurality of projection spurs 136 are each comprised of stainless steel and are formed by piercing each of the respective punch blades 124 with a piercing tool. During insertion of the punch blades 124 into the top surface or lid 106 of the closed container 102, each projection spur 136 contacts and forces down that portion of the top lid 106 sliced by the punch blades 124. This design results in a pair of D-shaped or half-moon shaped openings 144 in the top lid 106 of the closed container 102 for enabling the removal of the paint therein. Each of the locking notches 150 formed in the punch blades 124 can be rectangular-shaped and include a serrated edge 152 to assist the respective punch blade 124 to bite into the top surface or lid 106 of the closed container 102 for providing a more secure grip. The outer safety sleeve 114 is vertically movable along the cylindrical inner housing 110 and the guide ribs 122 formed on the cylindrical inner housing 110 provide an interference fit with the outer safety sleeve 114. The outer safety sleeve 114 also includes a stabilizer flange 172 to enable the pouring spout 100 to stand vertically when not in use. In its most fundamental embodiment, the pouring spout 100 includes a cylindrical inner housing 110 having an open top end 112 and a removable tethered cap 118. A pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 is provided for insertion into a top surface 106 of a container 102 where the cylindrical inner

housing 110 and the punch blades 124 serve to provide a discharge conduit for the container 102. A projection spur 136 is formed on each of the punch blades 124 for forcing open the top surface 106 of the container 102. An outer safety sleeve 114 is provided for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102.

This advantageous design is defined in the present Specification and set forth in claims of varying scope, for example amended Claim 1 recites:

1. A pouring spout for use with a closed container containing building materials comprising:
a cylindrical inner housing having an open top end and a removable tethered cap;
a pair of opposing punch blades affixed to said cylindrical inner housing for insertion with a downward force into a top surface of a container, said cylindrical inner housing and said punch blades for providing a discharge conduit for said container;
a projection spur formed on a surface of each of said punch blades for forcing open said top surface of said container; and
an outer safety sleeve being vertically movable over said cylindrical inner housing for covering said punch blades when said punch blades are withdrawn from said top surface of said container. (Emphasis added.)

F. Argument

1. Bernstein '992 in view of Tallman '662 Under 35 U.S. C. Sec. 103(a)

a. Claims 1-12 were rejected under 35 U.S.C. Sec. 103(a) by the Examiner as being unpatentable over U.S. Patent No. 5,960,992 to Bernstein et al. in view of U.S. Patent No. 4,881,662 to Tallman.

b. The Examiner argued that Bernstein '992 discloses a pouring spout comprising: a cylindrical inner housing at spout member 80 shown in Fig. 6; having an open top end shown in Fig. 6; a pair of opposing punch blades 97 shown in Fig. 6;

affixed to a cylindrical inner housing 80 shown in Fig. 10; for insertion into a top surface of a container described at column 3, lines 39-42; where the cylindrical inner housing and punch blades 96 are shown in Fig. 6; provide a discharge conduit for the container described in column 3, lines 39-42. The Examiner further argues that a projection spur 96 shown in Fig. 10; is formed on each of the punch blades 97 shown in Fig. 10; for forcing open the top surface of the container described in column 3, lines 39-42; and an outer safety sleeve 83 shown in Fig. 10; for covering the punch blades 97 when the punch blades are withdrawn from the top surface of the container. The Examiner admits of record that Bernstein '992 does not disclose a removable tethered cap with a retainer ring. The Examiner further argues that Tallman '662 teaches the use of a tethered cap 17 with a retaining ring surrounding the housing shown in Fig. 1.

c. The Examiner further argued that Bernstein '992 discloses: in Claim 2, a cylindrical inner housing 80 shown in Fig. 6 comprising an anti-drip collar 80 shown in Fig. 6; in Claim 3, cylindrical inner housing 80 shown in Fig. 6 comprising a plurality of guide ribs 84 shown in Fig. 11 for cooperating with the outer safety sleeve 90 shown in Fig. 10; in Claim 4, a cylindrical inner housing 80 shown in Fig. 6 comprised of plastic disclosed at column 4, lines 25-27; in Claim 6, discloses opposing punch blades 96 but does not disclose that the blades are comprised of stainless steel sheet metal; in Claim 7, discloses projection spurs 96 but not that the blades of the projection spurs 96 are comprised of stainless steel sheet metal; in claim 8, an outer safety sleeve 80 shown in Fig. 11 that includes a cylindrical plastic construction disclosed at column 1, lines 13-15; in Claim 9, an outer safety sleeve 80 shown in Fig. 11 includes a stabilizer flange 86 shown in Fig. 6 for enabling the pouring spout to stand vertically when not in use; in Claim 10, a raised ring 102 shown in Fig. 11 formed on the cylindrical inner housing 80 shown in Fig. 11 for stopping the cylindrical inner housing 80 at the top surface of the container as shown in Fig. 6; in Claim 11, a seal washer 60 shown in Fig. 10 positioned between a raised ring 102 shown in Fig. 11 formed on the cylindrical inner housing 80 and the top surface of the container shown in Fig. 6; and in Claim 12, a bearing surface (threads shown in Fig. 11) formed within the cylindrical housing 80 shown in Fig. 11 for supporting the opposing punch blades 97 shown in Fig. 11.

d. The Examiner then concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the

teachings of Tallman in combination with the pouring spout of Bernstein '992 (1) in order to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50; and (2) to have assumed that the blades were made out of metal in order to puncture barrier layers of paperboard.

e. Bernstein '992 purports to disclose a brick type container, particularly adapted for aseptic packaging of product such as potable liquids, is formed having optimum dimensions and location of a pour spout fitment thereon. The dimensions of the pour spout components are chosen for optimum performance. The top of the container carries a dispensing opening covered by a severable or frangible extrusion coating or other type of membrane. The fitment is applied to the container by applying it while the container is encased in a pocket on a conveyor, the pocket sides being rigid. The fitment includes a hollow cutter having cutting teeth on its lower periphery, the cutter also functioning as part of a pour spout. The toothed end of the cutter severs the membrane to permit dispensing of product from the carton. To prevent the severed extrusion or membrane which originally covers the dispensing opening from passing out of the carton upon dispensing of product, a flow filter is provided in the form of bars at one end of the entrance lumen of the cutter element. Typically, these bars are integrally molded with the cutter. The bars are located above the lower portions of the cutting teeth, in a plane containing the teeth roots or bases, to thereby preclude entry of a severed disc of membrane from entering the lumen of the pour spout or the cutter.

f. Tallman '662 purports to disclose a dispensing spout which includes a tubular body having axially opposite ends of which one end has a cutting edge for penetrating the wall of a container from which a product is to be dispensed and an opposite end of the tubular body has a groove defined by an axial groove portion and two generally radial grooved portions each ending in a blind wall. A ring is freely slidably received on the tubular body and has a tab in registration with the groove. A gasket is sandwiched between the retaining ring and the thread of the tubular body. The tab of the ring is engaged in one of the radially grooved portions for threading the tubular body into the container after the wall has been punctured. The tab is further received in the other of the radial grooves for compressing the gasket and effecting the seal between the dispensing spout and the container.

g. Bernstein '992 in view of Tallman '662 fail to teach, disclose or suggest

A pouring spout (100) for use with a closed container (102) containing building materials comprising ... (1) a pair of opposing punch blades (124) affixed to said cylindrical inner housing (110), (2) for insertion with a downward force into a top surface (106) of a container (102), (3) a projection spur (136) formed on a surface of each of said punch blades (124), and (4) an outer safety sleeve (114) being vertically movable over said cylindrical inner housing (110) for covering said punch blades (124) when said punch blades (124) are withdrawn from said top surface (106) of said container (102).

h. Applicant's amended Claims 1-12 each include (1) a pouring spout 100 for use with a closed container 102 containing building materials (see Applicant's specification page 7, lines 21-29), (2) a pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 (see Applicant's specification page 10, lines 8-11), (3) for insertion with a downward force (see Applicant's specification page 10, line 9 and page 16, lines 4-7) into a top surface 106 of a container 102, (4) a projection spur 136 formed on a surface of each of the punch blades 124 (see Applicant's specification page 12, lines 1-9, as amended and Applicant's Fig. 11), and (5) an outer safety sleeve 114 being vertically moveable over the cylindrical inner housing 110 (see Applicant's specification page 14, lines 9-14 and Applicant's Figs. 8-10) for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102. Each of these features 1-5 is respectively disclosed in Applicant's Specification as originally filed and now recited in Applicant's amended Claims 1-12.

i. Bernstein '992 in view of Tallman '662 totally fail to teach, disclose or suggest these features which are recited in Applicant's pending Claims 1-12. The Examiner's arguments set forth in the Office Communication mailed October 6, 2005 will now be addressed and the components cited by the Examiner properly identified.

j. Bernstein '992 in view of Tallman '662 fails to disclose a pouring spout for use with a closed container containing building materials as is recited in Applicant's amended Claim 1. Bernstein '992 at column 1, lines 9-11, recites brick-type containers ... particularly adapted for aseptic packaging of liquids and other food stuffs

while column 1, lines 39-42 recites aseptic brick packages ... being filled with milk or fruit juice, not building materials.

k. Bernstein '992 in view of Tallman '662 does not show "a pair of opposing punch blades affixed to said cylindrical inner housing for insertion with a downward force into a top surface of a container" as is recited in Applicant's amended Claim 1. The term "pair" means two punch blades as is shown in Applicant's Figs. 8-11. Bernstein '992 teaches a circular piercing element 90 (see column 3, line 61, Fig. 6) with cutting teeth 96, the latter terminating in tips 97. The plurality of cutting teeth 96 with tips 97 are shown as circular in Bernstein Figs. 6, 9 and 14, not a pair of opposing punch blades.

l. Bernstein '992 in view of Tallman '662 does not show the pair of opposing punch blades affixed to a cylindrical inner housing as is recited in Applicant's amended Claim 1. Applicant's pair of opposing punch blades 124 are shown affixed to the cylindrical inner housing 110 in Applicant's Fig. 8 (see Applicant's specification page 10, lines 8-11). Bernstein '992 states that the cutter tips 97 (which the Examiner argues are the opposing punch blades) are attached to the piercing element 90 (see Bernstein column 4, lines 15-18, and Figs. 6, 9 and 10), not the intermediate flanged spout member 80 that the Examiner argues is the Applicant's cylindrical inner housing. In order for the Examiner to be correct, the tips 97 would have to be affixed to the spout member 80 (the alleged cylindrical inner housing), not the piercing element 90.

m. Bernstein '992 in view of Tallman '662 fails to disclose that the pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 are inserted with a downward force into a top surface 106 of the container 102 as is recited at Applicant's page 10, line 9 and page 16, lines 4-7 and in Applicant's amended Claim 1. Bernstein '992 at column 4, lines 59-61 states that the cutting member 90 is designed to "rotate and cut" the peripheral portions of extrusion layer 48 as it rotates. A vertical downward force is not applied in Bernstein '992.

n. Bernstein '992 in view of Tallman '662 fails to disclose a projection spur 136 formed on a surface of each of the punch blades 124 for forcing open the top surface 106 of the container 102 as is recited in Applicant's amended Claim 1. The Examiner argues that Bernstein '992 component 96 in Fig. 10 is a projection spur formed on each of the punch blades. Bernstein's component 96 is the lower circumferential cutting

teeth 96 (see Bernstein '992, column 4, line 17) and component 97 is the tip of each cutting tooth (see Bernstein '992, column 4, lines 17-18). These components 96 and 97 in combination form the piercing element 90, which the Examiner argues is Applicant's pair of opposing punch blades 124 and Applicant's pointed tips 126 shown in Applicant's Fig. 8. Thus, neither of these components can be a projection spur 136 formed on the surface of each of the punch blades 124 as illustrated in Applicant's Fig. 8 and 11.

o. Bernstein '992 in view of Tallman '662 fails to disclose an outer safety sleeve 114 being vertically moveable over the cylindrical inner housing 110 for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102 as is recited in Applicant's amended Claim 1. The Examiner argues that Bernstein '992 component "83" in Fig. 10 is Applicant's outer safety sleeve. Component "83" does not appear in Bernstein '992 including Fig. 10. Subsequently, the Examiner refers (in Claim 8) to Bernstein '992 component 80 shown in Bernstein Fig. 11 as the Applicant's outer safety sleeve 114. Bernstein '992 component 80 is the intermediate flanged spout member 80 (see Bernstein column 3, lines 60-61 and Fig. 8). On page 2 of the Examiner's Action, the Examiner argued that Bernstein component 80 was Applicant's cylindrical inner housing 110. Now the Examiner argues that the identical component 80 is Applicant's outer safety sleeve 114. The Examiner should note that Bernstein '992 component 80 cannot be Applicant's cylindrical inner housing 110 and Applicant's outer safety sleeve 114, simultaneously, when Applicant shows two separate components. In fact, component 80 being the general identification number for the intermediate flanged spout member is neither Applicant's cylindrical inner housing 110 nor Applicant's outer safety sleeve 114. Thus, Bernstein's component 80 as Applicant's outer safety sleeve cannot simultaneously be vertically movable over Bernstein component 80 as Applicant's cylindrical inner housing.

p. As it relates to Applicant's Claim 2, Bernstein '992 in view of Tallman '662 fails to disclose that Bernstein '992 component 80 teaches a cylindrical inner housing 110 having an anti-drip collar 116 as is recited in Applicant's Claim 2. Bernstein component 80 is the intermediate flanged spout member (Bernstein column 3, lines 60-61) which does not disclose an anti-drip collar.

q. As it relates to Applicant's Claim 3, Bernstein '992 in view of Tallman '662 fails to disclose a cylindrical inner housing 110 having a plurality of guide ribs

122 as is recited in Applicant's Claim 3. Bernstein component 80 is the intermediate flanged spout member (Bernstein column 3, lines 60-61) which does not disclose a plurality of guide ribs. Bernstein component 84 is an outer thread 84 disclosed in Bernstein column 4, line 2 and Fig. 8. Further, Bernstein '992 component 90 is the piercing element 90, not Applicant's outer safety sleeve 114. The Examiner has now incorrectly identified Bernstein '992 components 80 and 90 as Applicant's outer safety sleeve 114 as well as Bernstein component 80 as Applicant's cylindrical inner housing 110 and anti-drip collar 116.

r. As it relates to Applicant's Claim 6, Bernstein '992 in view of Tallman '662 fails to disclose that the opposing punch blades are comprised of stainless steel as is recited in Applicant's Claim 6. Bernstein '992 teaches at column 4, line 25 that the Bernstein '992 spout is comprised of polyethylene.

s. As it relates to Applicant's Claim 7, Bernstein '992 in view of Tallman '662 fails to disclose that the projection spurs are comprised of stainless steel sheet metal and each projection spur is formed by piercing a respective surface on each of the punch blades (as is recited in Applicant's Claim 7). Bernstein '992 component 96 is the lower circumferential cutting teeth 96 (see Bernstein '992 column 4, line 17 and Bernstein Figs. 6, 9, 10 and 11), not projection spurs formed on the surface of each of the punch blades. Further, column 4, line 25 in Bernstein 992 recites that the spout is comprised of polyethylene, not stainless steel.

t. As it relates to Applicant's Claim 8, Bernstein '992 in view of Tallman '662 fails to disclose that the outer safety sleeve includes a cylindrical plastic construction. The Examiner argues in Applicant's Claims 2 and 4 that Bernstein component 80 is the Applicant's inner cylindrical housing and in Claim 8 that Bernstein component 80 is Applicant's outer safety sleeve. Bernstein component 80 is neither since it is the intermediate flanged spout member. Further, Bernstein component 80 cannot be Applicant's inner cylindrical housing 110 and Applicant's outer safety sleeve 114, simultaneously.

u. As it relates to Applicant's Claim 9, Bernstein '992 in view of Tallman '662 fails to disclose an outer safety sleeve. Bernstein '992 component 80 is the intermediate flanged spout member 80 shown in Bernstein Fig. 8 and 10 which includes a base flange 86 (see Bernstein column 4, line 3 and Figs. 8 and 10). The base flange 86

is unrelated to the non-existent outer safety sleeve and thus cannot be Applicant's stabilized flange 172 of the outer safety sleeve 114 recited in Applicant's Claim 9.

v. As it relates to Applicant's Claim 10, Bernstein '992 in view of Tallman '662 fails to disclose a raised ring formed on the cylindrical inner housing for stopping the cylindrical inner housing at the top surface of the container. Bernstein '992 component 80 is the intermediate flanged spout member 80 shown in Bernstein Fig. 8 and 10 which includes an inner integral molded bead 102 (see Bernstein column 5, line 2 and Figs. 8 and 10). The inner integral molded bead 102 serves as a dam to contain hot melt adhesive 60 during application of the fitment flange 86. Thus, component 102 is not a raised ring 120 as recited in Applicant's Claim 10.

w. As it relates to Applicant's Claim 11, Bernstein '992 in view of Tallman '662 fails to disclose a seal washer positioned between a raised ring formed on the cylindrical inner housing and the top surface of the container. Bernstein '992 component 60 is an adhesive ring or bead (see Bernstein column 3, lines 25, 33, 52 and Fig. 4) placed around the dispensing opening 36 of container 10 for adhesively attaching to the flange 86 of the pouring spout member 80. Thus, component 60 is an adhesive sealing component, not a seal washer as recited in Applicant's Claim 11.

x. As it relates to Applicant's Claim 12, Bernstein '992 in view of Tallman '662 fails to disclose the features recited in amended Claim 1. Thus, dependent Claims 2-12 which depend from allowable independent Claim 1 as amended are also each allowable.

y. Based upon the above arguments, it would not have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Tallman in combination with the pouring spout of Bernstein '992 in order to (1) provide the pouring spout 100 for use with a closed container containing building materials and particularly for dispensing liquid construction materials, such as paint, into a second container such as a roller pan without spillage, (2) to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50, and (3) to have assumed that the blades were made out of metal in order to puncture barrier layers of paperboard.

z. Thus, Bernstein '992 in view of Tallman '662 fail to teach, disclose or suggest the limitations of Applicant's pouring spout. Therefore, the Examiner

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Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

is respectfully requested to withdraw the rejections under 35 U.S.C. Sec. §103(a) as applied to Applicant's pending Claims 1-12.

2. Iwamoto '070 in view of Tallman '662
Under 35 U.S. C. Sec. 103(a)

a. Claims 13-15 were rejected under 35 U.S.C. Sec. 103(a) by the Examiner as being unpatentable over U.S. Patent No. 5,147,070 to Iwamoto in view of U.S. Patent No. 4,881,662 to Tallman.

b. The Examiner argued that Iwamoto '070 discloses a pouring spout comprising: a cylindrical inner housing 1 shown in Fig. 1; having an open top end 1a shown in Fig. 1; a pair of opposing punch blades 2b; affixed to a cylindrical inner housing shown in Fig. 2; for insertion into a top surface of a container described at column 1, lines 7-10; where the cylindrical inner housing shown in Fig. 1 and punch blades 2b provide a discharge conduit for the container described in column 2, lines 17-25. The Examiner further argues that a locking notch 7 shown in Fig. 4; is formed in each of the punch blades 2b for securing (at outward projections 10 shown in Fig. 3) the punch blades 2b to a top surface of the container; each of the locking notches 7 shown in Fig. 4 comprises a serrated edge 11a shown in Fig. 4 (Applicant's Claim 14) and is rectangular-shaped as shown in Fig. 4 (Applicant's Claim 15); and an outer safety sleeve 1a shown in Fig. 2; for covering the punch blades 2b when the punch blades 2b are withdrawn from the top surface of the container shown in Figs. 2 and 3; where the outer safety sleeve 1a is vertically movable shown in Fig. 3 along the cylindrical inner housing 1. The Examiner admits of record that Iwamoto '070 does not disclose a removable tethered cap. The Examiner further argues that Tallman '662 teaches the use of a tethered cap 17 shown in Fig. 1.

c. The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Tallman '662 in combination with the pouring spout of Iwamoto '070 in order to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50.

d. Iwamoto '070 purports to disclose a pouring spout for a container having a tubular body to be mounted on a container wall, the inner surface of the tubular body having a guiding recess therein extending parallel to the axis of the

tubular body, the recess having a greater width at the portion thereof toward one end of the tubular body and a shoulder at an end corresponding to another end of the tubular body; a tubular blade movably mounted within the tubular body and having a longitudinal projection on the outer surface thereof and an outward projection at the end of the longitudinal projection corresponding to the one end of the tubular body, the longitudinal projection being slidably engaged in the recess for guiding movement of the tubular blade into the tubular body in a direction from one end toward the other end, the shoulder having a notch portion in an inner peripheral edge having a cross-sectional shape different from the cross-sectional shape of the longitudinal projection for blocking movement of the tubular blade in the direction of a set position within the tubular body by engagement of the longitudinal projection with the shoulder at the position of the notch portion, and the shoulder being deformable for permitting the longitudinal projection to fit into the notch and permit movement of the tubular blade in the direction past the set position until the outward projection engages the shoulder; and a cap mounted over the tubular body.

e. Tallman '662 purports to disclose a dispensing spout which includes a tubular body having axially opposite ends of which one end has a cutting edge for penetrating the wall of a container from which a product is to be dispensed and an opposite end of the tubular body has a groove defined by an axial groove portion and two generally radial grooved portions each ending in a blind wall. A ring is freely slidably received on the tubular body and has a tab in registration with the groove. A gasket is sandwiched between the retaining ring and the thread of the tubular body. The tab of the ring is engaged in one of the radially grooved portions for threading the tubular body into the container after the wall has been punctured. The tab is further received in the other of the radial grooves for compressing the gasket and effecting the seal between the dispensing spout and the container.

f. Iwamoto '070 in view of Tallman '662 fail to teach, disclose or suggest

A pouring spout for use with a closed container containing building materials comprising ... (1) a cylindrical inner housing (110), (2) a pair of opposing punch blades (124) affixed to said cylindrical inner housing (110), (3) a locking notch (150) integrally formed in each of said opposing punch blades (124), and (4) an outer safety sleeve (114) for covering said punch blades (124) when said punch blades (124) are withdrawn from said top surface (106) of said container (102).

g. Applicant's amended Claims 13-15 each include (1) a pouring spout 100 for use with a closed container 102 containing building materials (see Applicant's specification page 7, lines 21-29), (2) a cylindrical inner housing 110 having an open top end 112 (see Applicant's specification page 8, lines 20-21), (3) a pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 (see Applicant's specification page 10, lines 8-11), (4) for insertion with a downward force (see Applicant's specification page 10, line 9 and page 16, lines 4-7) into a top surface 106 of a container 102, (5) a locking notch 150 integrally formed in each of the opposing punch blades 124 for securing the punch blades 124 to the top surface 106 of the container 102 (see Applicant's specification page 12, line 29 - page 13, line 2), and (6) an outer safety sleeve 114 for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102, where the safety sleeve 114 is vertically moveable over the cylindrical inner housing 110 (see Applicant's specification page 14, lines 9-14 and Applicant's Figs. 8-10). Each of these features 1-6 is respectively disclosed in Applicant's Specification as originally filed and now recited in Applicant's amended Claims 16-20.

h. Iwamoto '070 in view of Tallman '662 totally fails to teach, disclose or suggest these features which are recited in Applicant's amended pending Claims 13-15. The Examiner's arguments set forth in the Office Communication mailed October 6, 2005 will now be addressed and the components cited by the Examiner properly identified.

i. Iwamoto '070 in view of Tallman '662 fail to disclose a pouring spout for use with a closed container containing building materials as is recited in Applicant's amended Claim 13. Iwamoto '070 at column 1, lines 7-11 recites that the invention is directed to a pouring plug to be mounted on a container formed from a sheet material in which synthetic resin films are laminated on the inside and outside of a sheet of cardboard.

j. Iwamoto '070 in view of Tallman '662 does not teach a cylindrical inner housing 110 having an open top end 112 as recited in Applicant's amended Claim 13. Applicant's cylindrical inner housing 110 is positioned inside the outer safety sleeve 114 which the reason why it is called the cylindrical "inner" housing 110. The Examiner argues that Iwamoto '070 component 1 shown in Iwamoto Fig. 1 is Applicant's cylindrical inner housing 110. Iwamoto component 1 is a tubular body 1 (see Iwamoto

'070, column 3, line 36). A tubular blade 2 (see Iwamoto '070, column 3, line 34 and Fig. 1) fits within the tubular body 1 (see Iwamoto '070, column 4, lines 4-8, and Iwamoto Fig. 1) so that the tubular body 1 and the tubular wall 1a is actually positioned outside of the tubular blade 2 (see Iwamoto Fig. 1). Therefore, the tubular body 1 and the tubular wall 1a of Iwamoto '070 cannot be Applicant's cylindrical inner housing 110 and open top end 112.

k. Iwamoto '070 in view of Tallman '662 does not show "a pair of opposing punch blades affixed to said cylindrical inner housing for insertion with a downward force into a top surface of a container" as is recited in Applicant's amended Claim 13. The term "pair" means two punch blades as is shown in Applicant's Figs. 8-11. The Examiner argues that Iwamoto's tubular body 1 is Applicant's cylindrical inner housing 110 (see Examiner's Action, page 5, line 2). Figs. 1-3 of Iwamoto clearly show that a sawtooth edge 2b is connected to the tubular blade 2 (see Iwamoto, column 4, lines 22-25). The tubular blade 2 is tubular or cylindrical in form comprising a tubular wall 2a having its lower end edge formed into a sawtooth edge 2b (as recited in Iwamoto, column 3, lines 51-54). The sawtooth edge 2b comprises a plurality of teeth formed in a circular cutting component as is clearly shown in Fig. 1. Thus, Iwamoto '070 discloses a circular/tubular cutting or piercing blade 2 in Iwamoto Fig. 1 and thus fails to disclose "a pair of opposing punch blades" as recited by Applicant in amended Claim 13.

l. Iwamoto '070 in view of Tallman '662 does not disclose the pair of opposing punch blades affixed to a cylindrical inner housing as is recited in Applicant's amended Claim 13. Applicant's pair of opposing punch blades 124 are shown affixed to the cylindrical inner housing 110 in Applicant's Fig. 8 (see Applicant's specification page 10, lines 8-11). The Examiner argues that Iwamoto's tubular body 1 is Applicant's cylindrical inner housing 110 (see Examiner's Action, page 5, line 2). Figs. 1-3 of Iwamoto clearly show that a sawtooth edge 2b is connected to the tubular blade 2 (see Iwamoto, column 4, lines 22-25), not the tubular body 1. Since the sawtooth edge 2b is affixed to the tubular blade 2 and not the tubular body 1 (which the Examiner argues is Applicant's cylindrical inner housing 110), then Iwamoto '070 fails to disclose a pair of opposing punch blades affixed to the cylindrical inner housing. Additionally, in Iwamoto '070 Fig. 2, the tubular blade 2 with the attached sawtooth edge 2b is moved vertically, i.e., downward, within the tubular body 1 (see Iwamoto, column 4, lines 27-32). Therefore, the sawtooth

edge 2b cannot be affixed to the tubular body 1 since the sawtooth edge 2b moves relative to the tubular body 1.

m. Iwamoto '070 in view of Tallman '662 fails to disclose a locking notch 150 integrally formed in each of the opposing punch blades 124 for securing the punch blades 124 to the top surface 106 of the container 102 as is recited in Applicant's amended Claim 13. The Examiner argues that Iwamoto component 7 shown in Iwamoto Fig. 4 is Applicant's locking notch 150. Iwamoto's component 7 is a shoulder 7 (see Iwamoto, column 3, lines 59 - column 4, line 3, and Iwamoto Figs. 1-4), not a locking notch. The function of Iwamoto's shoulder 7 is that when the tubular blade 2 is fitted into the tubular body 1, the lower end 9a of the longitudinal projection 9 and the corresponding outward projection 10 are opposed to a shoulder. Then an end edge 9b shown in Iwamoto Fig. 4 of the longitudinal projection 9 fits into the edge 11a of the notch portion 11. Applicant's locking notch 150 is integrally formed (see Applicant's specification page 13, line 2) in each of the opposing punch blades 124 for securing the punch blades 124 to the top surface 106 of the container 102. Iwamoto's shoulder 7 and notch 11 shown in Iwamoto's Fig. 4 have no relevance to securing the pair of punch blades (i.e., Iwamoto's sawtooth edge 2b) to a top surface of a container as is recited in Applicant's amended Claim 13. Iwamoto's notch 11 and shoulder 7 are formed in Iwamoto's tubular body 1, not the sawtooth edge 2b (i.e., Applicant's punch blades 124) of the tubular blade 2. Iwamoto's notch 11 and shoulder 7 are employed for providing a temporary stop position (see Iwamoto, column 4, lines 14-26), not for securing the tubular blade 2 (i.e., Applicant's punch blades 124) to a container.

n. Iwamoto '070 in view of Tallman '662 fails to disclose an outer safety sleeve 114 for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102, and where the safety sleeve 114 is vertically movable over the cylindrical inner housing 110 as is recited in Applicant's amended Claim 13. (See Applicant's specification page 14, lines 9-11.) The Examiner argued that Iwamoto '070 component 1a shown in Iwamoto Fig. 2 is Applicant's outer safety sleeve 114 for covering the punch blades (i.e., Iwamoto's sawtooth edge 2b) when said punch blades are withdrawn from the top surface of the container. The Examiner makes reference to Iwamoto's Figs. 2 and 3. The Examiner argued that Iwamoto's tubular body 1 shown in Iwamoto's Fig. 1 is Applicant's cylindrical inner housing 110 (even though

Iwamoto's tubular body 1 is the external housing, not the internal housing) (see Office Action, page 5, line 2). The Examiner now argues that Iwamoto's tubular wall 1a is Applicant's outer safety sleeve 114 (see Examiner's Action, page 5, line 11). The tubular wall 1a is integral with the tubular body 1 (see Iwamoto, column 3, lines 36-40 and Iwamoto Fig. 1). The Examiner has now argued that the tubular body 1 and the integral tubular wall 1a are both Applicant's cylindrical inner housing 110 and Applicant's outer safety sleeve 114, simultaneously. Applicant teaches and claims two separate and distinct components in its cylindrical inner housing 110 and outer safety sleeve 114. Iwamoto '070 does not and consequently fails to teach the limitations of Applicant's amended Claim 13. Finally, Iwamoto fails to disclose that the tubular wall 1a (i.e., Applicant's outer safety sleeve 114) is vertically movable over the tubular body 1 (i.e., Applicant's cylindrical inner housing 110). This is not possible in Iwamoto '070 since the tubular wall 1a is integrally connected to the tubular body 1 (see Iwamoto, column 3, lines 36-40).

o. As it relates to Applicant's Claim 14, Iwamoto '070 in view of Tallman '662 fails to disclose a locking notch comprising a serrated edge. The Examiner argues that Iwamoto component 7 shown in Fig. 4 comprises a serrated edge 11a. Iwamoto component 7 is a shoulder having a triangular notch 11 including cut edges 11a. See Iwamoto '070, column 4, lines 35-40. The cut edges 11a are specifically designed for temporary engagement between the tubular body 1 and the tubular blade 2 as shown in Iwamoto Fig. 2. At column 4, line 38, Iwamoto specifically notes that with downward pressure, the cut edges 11a of notch 11 are deformed by the push down force. This construction clearly does not meet the limitation of Applicant's Claim 14 which specifically teaches and recites a "locking notch" 150 comprising a serrated edge 152 for securing the punch blades 124 to the top surface 106 of the container 102 for locking Applicant's pouring spout 100 in position.

p. As it relates to Applicant's Claim 15, Iwamoto '070 in view of Tallman '662 fails to disclose that each locking notch is rectangular-shaped as is recited in Applicant's Claim 15 and illustrated in Applicant's Fig. 11. The Examiner argues that Iwamoto '070 discloses a component 7 that is a rectangular-shaped locking notch as shown in Iwamoto Fig. 4. At column 3, lines 59 - column 4, line 3, Iwamoto discloses that component 7 is a shoulder having a triangular notch 11 which is not rectangular-shaped.

Inventor: Edward G. Hanell
Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

Consequently, Iwamoto fails to disclose a rectangular-shaped locking notch as is recited in Applicant's Claim 15.

q. Based upon the above arguments, it would not have been obvious to one of ordinary skill in the art at the time the invention was made in view of Tallman '662 to modify the pouring spout of Iwamoto '070 to (1) provide the pouring spout 100 for use with a closed container containing building materials and particularly for dispensing liquid construction materials, such as paint, into a second container such as a roller pan without spillage, and (2) to utilize the teachings of Tallman '662 in combination with the pouring spout of Iwamoto '070 in order to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50.

r. Thus, Iwamoto '070 in view of Tallman '662 fail to teach, disclose or suggest the limitations of Applicant's pouring spout as recited in Applicant's pending amended Claims 13-15. Therefore, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. Sec. §103(a) as applied to Applicant's pending Claims 13-15.

3. Bernstein '114 in view of Tallman '662
Under 35 U.S. C. Sec. 103(a)

a. Claims 16-20 were rejected under 35 U.S.C. Sec. 103(a) by the Examiner as being unpatentable over U.S. Patent No. 5,366,114 to Bernstein et al. in view of U.S. Patent No. 4,881,662 to Tallman.

b. The Examiner argued that Bernstein '114 discloses a pouring spout comprising: a cylindrical inner housing 24 shown in Fig. 4; having an open top end 24; a pair of opposing punch blades 2b; affixed to a cylindrical inner housing 24 shown in Fig. 2; for insertion into a top surface of a container described at column 1, lines 7-10; where the cylindrical inner housing shown in Fig. 1 and punch blades 2b provide a discharge conduit for the container described in column 2, lines 17-25. The Examiner further argues that an outer safety sleeve 46 shown in Fig. 5; for covering the punch blades 54 shown in Fig. 5 when the punch blades 54 are withdrawn from the top surface of the container shown in Fig. 2. The safety sleeve 46 is vertically movable along the cylindrical inner housing 24. The Examiner admits of record that Bernstein '114 does not

disclose a removable tethered cap. The Examiner further argues that Tallman '662 teaches the use of a tethered cap 17 shown in Fig. 1.

c. The Examiner further argued that Bernstein '114 discloses: in Claim 17, a cylindrical inner housing 2 shown in Fig. 4 which comprises a plurality of vertical guide ribs 46 shown in Fig. 5 formed thereon; in Claim 18, a safety sleeve 46 shown in Fig. 5 further includes a top ring 52 shown in Fig. 5 having a plurality of slots 47 shown in Fig. 4 formed therein; in Claim 19, the safety sleeve 46 shown in Fig. 5 further includes a top ring 52 shown in Fig. 5 having a plurality of slots 47 shown in Fig. 4 formed therein for cooperating with a plurality of vertical guide ribs 46 shown in Fig. 5 formed on the cylindrical inner housing 24 shown in Fig. 4; and in Claim 20, a plurality of projections 47 shown in Fig. 4 formed within the cylindrical inner housing 24 is comprised of plastic as disclosed in column 1, line 18.

d. The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Tallman in combination with the pouring spout of Bernstein '114 in order to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50.

e. Bernstein '114 purports to disclose a container with a pour spout fitment. The fitment carries a flange which secures the fitment to the container, the flange surrounding a dispensing opening in the container. The pour spout is normally externally closed by a screw cap threaded thereon. A frangible membrane normally spans and internally closes the dispensing opening. A hollow piercing insert is positioned within the pour spout lumen, the lower edge of the insert being serrated to define cutting teeth. The screw cap is removed and the piercing element pushed downwardly to thereby rupture the frangible membrane and permit dispensing from the container. The interior of the spout is provided with a plurality of axially spaced, inwardly extending ribs which cooperate with outwardly extending protrusions on the piercing insert to thus define a plurality of discrete axial locations of the piercing insert relative to the spout.

f. Tallman '662 purports to disclose a dispensing spout which includes a tubular body having axially opposite ends of which one end has a cutting edge for penetrating the wall of a container from which a product is to be dispensed and an opposite end of the tubular body has a groove defined by an axial groove portion and two generally radial grooved portions each ending in a blind wall. A ring is freely slidably

Inventor: Edward G. Hanell
Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

received on the tubular body and has a tab in registration with the groove. A gasket is sandwiched between the retaining ring and the thread of the tubular body. The tab of the ring is engaged in one of the radially grooved portions for threading the tubular body into the container after the wall has been punctured. The tab is further received in the other of the radial grooves for compressing the gasket and effecting the seal between the dispensing spout and the container.

g. Bernstein '114 in view of Tallman '662 fail to teach, disclose or suggest

A pouring spout for use with a closed container containing building materials comprising ... (1) a pair of opposing punch blades (124) affixed to said cylindrical inner housing (110), (2) for insertion with a downward force into a top surface (106) of a container (102), (3) a plurality of penetrations (128) formed in said opposing punch blades (124), (4) for cooperating with a corresponding plurality of projections (132) formed within said cylindrical inner housing (110), (5) an outer safety sleeve (114) for covering said punch blades (124) when said punch blades (124) are withdrawn from said top surface (106) of said container (102), and (6) where said safety sleeve (114) is vertically movable over said cylindrical inner housing (110).

h. Applicant's amended Claims 16-20 each include (1) a pouring spout 100 for use with a closed container 102 containing building materials (see Applicant's specification page 7, lines 21-29), (2) a pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 (see Applicant's specification page 10, lines 8-11), (3) for insertion with a downward force (see Applicant's specification page 10, line 9 and page 16, lines 4-7) into a top surface 106 of a container 102, (4) a plurality of penetrations 128 formed in said opposing punch blades 124 (see Applicant's specification page 10, lines 17-20 and Applicant's Fig. 11), (5) for cooperating with a corresponding plurality of projections 132 formed within said cylindrical inner housing 110 (see Applicant's specification page 10, lines 24-28 and Applicant's Fig. 11), and (6) an outer safety sleeve 114 for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102, where the safety sleeve 114 is vertically moveable over the cylindrical inner housing 110 (see Applicant's specification page 14, lines 9-14 and Applicant's Figs. 8-10). Each of these features 1-6 is respectively disclosed in Applicant's Specification as originally filed and now recited in Applicant's amended Claims 16-20.

i. Bernstein '114 in view of Tallman '662 totally fail to teach, disclose or suggest these features which are recited in Applicant's pending Claims 16-20. The Examiner's arguments set forth in the Office Communication mailed October 6, 2005 will now be addressed and the components cited by the Examiner properly identified.

j. Bernstein '114 in view of Tallman '662 fails to disclose a pouring spout for use with a closed container containing building materials as is recited in Applicant's amended Claim 16. Bernstein '116 at column 1, lines 9-15, recites that the invention is directed to dispensing containers for storing and dispensing liquids such as milk, fruit juice and other potables but not building materials. Such containers assume the form of the well known gable top type milk container wherein access to the contents is obtained by spreading one end of the gable top apart to thereby obtain a pouring or dispensing spout.

k. Bernstein '114 in view of Tallman '662 does not show "a pair of opposing punch blades affixed to said cylindrical inner housing for insertion with a downward force into a top surface of a container" as is recited in Applicant's amended Claim 16. The term "pair" means two punch blades as is shown in Applicant's Figs. 8-11. Bernstein '114 teaches a piercing element insert 44 (see Bernstein '114, column 3, line 23 and Bernstein Fig. 5) which is "generally cylindrical" and which includes a plurality of teeth 54 (see Bernstein '114, column 3, line 64 and Figs. 2, 4) for piercing a frangible sealing membrane 72 (see Bernstein '114, column 3, line 40 and Fig. 4). The Examiner argued that Applicant's pair of opposing punch blades are shown in Bernstein '114 by component "2b". However, a component "2b" is not shown in Bernstein '114. Thus, Bernstein '114 discloses a circular piercing element 44 in Bernstein Fig. 5 and fails to disclose "a pair of opposing punch blades" as recited by Applicant in amended Claim 16.

l. Bernstein '114 in view of Tallman '662 does not show the pair of opposing punch blades affixed to a cylindrical inner housing as is recited in Applicant's amended Claim 16. Applicant's pair of opposing punch blades 124 are shown affixed to the cylindrical inner housing 110 in Applicant's Fig. 8 (see Applicant's specification page 10, lines 8-11). The Examiner argued that the pouring spout cylindrical wall 24 shown in Bernstein's Fig. 4 is Applicant's cylindrical inner housing 110 (see top of page 6 of Office Action, argument directed to Applicant's Claim 16). However, Bernstein '114 shows the plurality of teeth 54 (see Bernstein '114, column 3, line 64, Figs. 2, 4) attached to the

piercing element insert 44 (see Bernstein '114, column 3, line 23) which fits inside the pouring spout cylindrical wall 24 shown in Figs. 2 and 4. If Bernstein's '114 cutting teeth 54 are attached to the piercing element insert 44 and not to the pouring spout cylindrical wall 24 (i.e., Applicant's cylindrical inner wall 110), then Bernstein '114 cannot disclose "a pair of opposing punch blades affixed to said cylindrical inner housing" as argued by the Examiner. This is because Bernstein's cutting teeth 54 are affixed to the Bernstein piercing element insert 44 and not to the pouring spout cylindrical wall 24.

m. Bernstein '114 in view of Tallman '662 fails to disclose that the pair of opposing punch blades 124 affixed to the cylindrical inner housing 110 have a plurality of penetrations 128 formed through the punch blades 124 for cooperating with a corresponding plurality of projections 132 formed within Applicant's cylindrical inner housing 110 as is recited in Applicant's amended Claim 16. Bernstein '114 fails to disclose such a construction but instead discloses the cutting teeth 54 (see Bernstein '114, column 3, line 64) integrally formed on the bottom of the piercing element insert 44 (see Bernstein '114, column 3, line 23 and Figs. 2, 4). The Examiner fails to support her position that this novel support structure for the pair of opposing punch blades 124 recited in Applicant's amended Claim 16 is taught by Bernstein '114.

n. Bernstein '114 in view of Tallman '662 fails to disclose an outer safety sleeve 114 for covering the punch blades 124 when the punch blades 124 are withdrawn from the top surface 106 of the container 102, and where the safety sleeve 114 is vertically movable over the cylindrical inner housing 110 as is recited in Applicant's amended Claim 16. (See Applicant's specification page 14, lines 9-11.) The Examiner argued that Bernstein '114 component 46 is Applicant's outer safety sleeve. Bernstein component 46 is a cylindrical wall (see Bernstein '114, column 3, line 25, Fig. 5) of the piercing insert 44. Fig. 5 of Bernstein '114 illustrates the piercing element insert 44 that fits inside the pour spout cylindrical wall 24 (see Bernstein '114, Figs. 2 and 4) which the Examiner argued is Applicant's cylindrical inner housing 110. Thus, Bernstein's component 46 (cylindrical wall 46) cannot be Applicant's outer safety sleeve 114 because the cylindrical wall 46 fits within and thus cannot be movable over the pour spout cylindrical wall 24 (i.e., Applicant's cylindrical inner housing 110 per the Examiner argument re Applicant's Claim 16). This is the case since Figs. 2 and 4 of Bernstein '114 clearly show that the cylindrical wall 46 fits within the structure of the pour spout cylindrical wall 24. In order for the

Examiner to be correct, the outer safety sleeve (Bernstein component 46) would have to fit over the cylindrical inner housing (Bernstein component 24) to satisfy the limitation of Applicant's amended Claim 16. Bernstein's Figs. 2 and 4 fail to illustrate such a structure.

o. As it relates to Applicant's Claim 17, Bernstein '114 in view of Tallman '662 fails to disclose a plurality of guide ribs 122 formed on the cylindrical inner housing 110. The Examiner argues that Bernstein '114 discloses a plurality of guide ribs 46 formed on a cylindrical inner housing 2 as shown in Fig. 5. Bernstein '114 component 46 is a cylindrical wall 46 (see Bernstein '114, column 3, line 25) of the piercing insert 44 shown in Bernstein Fig. 5 and thus is not a plurality of guide ribs 122 as recited in Applicant's Claim 17. The Examiner previously identified Bernstein component 46 as Applicant's outer safety sleeve 114 in Applicant's amended Claim 16, and Bernstein component 24 (as opposed to Bernstein component 2 here) as Applicant's cylindrical inner housing 110 in Applicant's amended Claim 16.

p. As it relates to Applicant's Claim 18, Bernstein '114 in view of Tallman '662 fails to disclose an outer safety sleeve 114 further including a top ring 170 having a plurality of slots 176 formed therein as is recited in Applicant's Claim 18 and shown in Applicant's Fig. 8. The Examiner argues that Bernstein component 46 is Applicant's outer safety sleeve 114. Component 46 shown in Fig. 5 of Bernstein '114 is a cylindrical wall 46 (see Bernstein '114, column 3, line 25), not an outer safety sleeve 114 as recited in Applicant's Claim 18. The Examiner next argues that Bernstein component 52 is Applicant's top ring 170 mounted on top of Applicant's outer safety sleeve 114. Component 52 of Bernstein '114 is an abutment or pushbutton 52 (see Bernstein '114, column 3, lines 30, 51) for pushing the piercing element insert 44 down onto the sealing membrane 72, not the top ring 170 of an outer safety sleeve 114 as recited in Applicant's Claim 18. The Examiner next argues that Bernstein '114 component 47 is the plurality of slots formed in Applicant's top ring 170. Component 47 of Bernstein '114 is a side port (see Bernstein '114, column 3, lines 23-25 and Bernstein Fig. 5) formed in the sidewall 46 of piercing element insert 44 shown in Figs. 2 and 4, not Applicants plurality of slots 176 formed in Applicant's top ring 170 as is recited in Applicant's Claim 18.

q. As it relates to Applicant's Claim 19, Bernstein '114 in view of Tallman '662 fails to disclose an outer safety sleeve 114 further including a top ring 170 having a plurality of slots 176 formed therein for cooperating with a plurality of guide ribs

122 formed on the cylindrical inner housing 110 as is recited in Applicant's Claim 19 and shown in Applicant's Fig. 8. The Examiner argues that Bernstein component 46 is Applicant's outer safety sleeve 114. Component 46 shown in Fig. 5 of Bernstein '114 is a cylindrical wall 46 (see Bernstein '114, column 3, line 25), not an outer safety sleeve 114 as recited in Applicant's Claim 19. The Examiner next argues that Bernstein component 52 is Applicant's top ring 170 mounted on top of Applicant's outer safety sleeve 114. Component 52 of Bernstein '114 is an abutment or pushbutton 52 (see Bernstein '114, column 3, lines 30, 51) for pushing the piercing element insert 44 down onto the sealing membrane 72, not the top ring 170 of an outer safety sleeve 114 as recited in Applicant's Claim 19. The Examiner next argues that Bernstein '114 component 47 is the plurality of slots formed in Applicant's top ring 170. Component 47 of Bernstein '114 is a side port (see Bernstein '114, column 3, lines 23-25 and Bernstein Fig. 5) formed in the sidewall 46 of piercing element insert 44 shown in Figs. 2 and 4, not Applicants plurality of slots 176 formed in Applicant's top ring 170 as is recited in Applicant's Claim 19. Finally, Bernstein component 46 is a cylindrical wall in the piercing element 44 (see Bernstein '114, column 3, line 25), not Applicant's vertical guide ribs 122 formed on Applicant's cylindrical inner housing 110 as recited in Applicant's Claim 19.

r. As it relates to Applicant's Claim 20, Bernstein '114 in view of Tallman '662 fails to disclose that the plurality of projections 132 formed within the cylindrical inner housing 110 is comprised of plastic as is recited in Applicant's Claim 20. The Examiner argues that Bernstein component 47 shown in Bernstein Fig. 4 formed within the cylindrical inner housing 24 is comprised of plastic as noted in Bernstein '114, column 1, line 18. Bernstein component 47 is a side port (see Bernstein '114, column 3, lines 23-25 and Bernstein Fig. 4) formed in a side wall 46 of piercing element insert 44 shown in Bernstein Figs. 2 and 4. The side ports 47 of Bernstein '114 are not the plurality of projections 132 recited in Applicant's Claim 20.

s. Based upon the above arguments, it would not have been obvious to one having ordinary skill in the art at the time the invention was made (1) to provide the pouring spout 100 for use with a closed container containing building materials and particularly for dispensing liquid construction materials, such as paint, into a second container such as a roller pan without spillage, and (2) to utilize the teachings of Tallman

Inventor: Edward G. Hanell
Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

'662 in combination with the pouring spout of Bernstein '114 in order to secure the cap to the spout portion as taught by Tallman '662 at column 3, lines 45-50.

t. Thus, Bernstein '114 in view of Tallman '662 fail to teach, disclose or suggest the limitations of Applicant's pouring spout as recited in Applicant's amended Claims 16-20. Therefore, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. Sec. §103(a) as applied to Applicant's pending Claims 16-20.

V. CONCLUSION:

1. In light of the above analysis, the cited references neither individually under 35 U.S.C. §102 nor in combination under 35 U.S.C. §103(a) teach, disclose or suggest the invention as recited in Applicant's once-amended pending Claims. The once-amended pending Claims are set forth in a marked-up version herein, as required by 37 C.F.R. Sec. 1.121 effective as of July 30, 2003. Thus, pending amended independent Claims 1, 13 and 16 and the claims dependent therefrom, i.e., Claims 2-12, 14-15, and 17-20 should be allowed and such action is earnestly solicited.

2. The prior art made of record has been thoroughly reviewed and has not been found to anticipate or make obvious the pending amended Claims.

Inventor: Edward G. Hanell
Serial No. 10/619,903
Amendment "A"
Attorney Docket #10386

3. The Examiner is invited and encouraged to initiate a telephone conference with Applicants' attorney at the telephone number listed below if the Examiner believes that such a conference would expedite allowance of the pending claims. Telephone calls may be directed to John S. Christopher at (310) 649-7811.

Respectfully submitted,
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